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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/626,304	07/24/2003	Aaron Strand	8362-CIP-CIP-DIV	1940

22922 7590 07/26/2007
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EXAMINER

THAKUR, VIREN A

ART UNIT	PAPER NUMBER
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1761

MAIL DATE	DELIVERY MODE
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07/26/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/626,304	Applicant(s) STRAND ET AL.	
	Examiner Viren Thakur	Art Unit 1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 May 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 148, 152-167, 169, 179 and 187-218 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 148, 152-167, 169, 179 and 187-218 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Confirmation of Applicant's election without traverse of Group II, Claims 140-144 and 148-186 in the reply filed on May 15, 2007 is acknowledged.

Response to Amendment

2. As a result of the cancellation of claims 173 and 181, the objection to the instant claims has been withdrawn.
3. As a result of the cancellation of claims 143, 170, 171 and 180, the rejection under 35 U.S.C. 112, second paragraph has been withdrawn.
4. The rejection of claim 167 under 35 U.S.C. 112, second paragraph has been withdrawn.
5. Those rejections under 35 U.S.C. 102 and 103 and the double patenting rejections that have not been repeated in this Office Action are considered to be withdrawn.

Claim Objections

6. **Claims 148 and 187 objected to because of the following informalities:** The claims recite the limitation "said hood also having first and second areas of structural weakness respectively located intermediate said fold and said and second ends of said hood. It appears that there is a phrase missing between the underlined limitations. Appropriate correction is required.
7. **Claim 156 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim.** Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Instant claim 156 does not further limit independent claim 148, which also recites wherein the fold is between the ends of the hood and also wherein areas of structural weakness are in between said fold and said ends of the hood. Thus the independent claim inherently also discloses wherein the fold structure is located between said first and second areas of structural weakness..

Claim Rejections - 35 USC § 112

8. The following is a quotation of the second paragraph of 35 U.S.C. 112:

Art Unit: 1761

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

9. **Claim 169, 179 and 214 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential elements, such omission amounting to a gap between the elements. See MPEP § 2172.01.**

The instant claims recite a male and female fastener structure from which there extends a first and second fin structure. However, based on the specification the instant claims are not clear as to how the fastener structures attach to fin structures, which extend from either the sheet of web material or the ends of the hood. Figure 3, item 19 is referred to in Applicant's specification as fin structures and item 16 is referred to as skirt structures (See Page 27, Line 30 and Page 28, Line 8). Even item 16 of figure 44, which resembles the drawing depicted in the instant claims, is referred to as the skirt. It appears as if the instant claims are missing skirt structures, which extends from the fasteners and are coupled to the fin structures. The other independent claims (148, 187 and 212) refer to skirt structures that extend from the reclosable fastener tracks. Therefore, it is also unclear as to whether the "fin structures" of the instant claims are meant to refer to skirt structures.

10. **Claims 148, 152-167, 169, 179, 187-218 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out**

and distinctly claim the subject matter which applicant regards as the invention.

The instant claims recite the limitation "at least one sheet of web material" and then further recites the limitation "said web material." There is insufficient antecedent basis for this limitation in the claim. The claim is unclear as to whether said web material refers to the at least one sheet of web material.

Claim 148 recites the limitation "said second skirt structure. There is insufficient antecedent basis for this limitation in the claim.

Claim 157 recites the limitation "said parent film." There is insufficient antecedent basis for this limitation in the claim. The instant claim depends from claim 156 which in turn depends from claim 148, neither of which recites a parent film.

Claim 169 recites the limitation "an opening located between said second fin structure hood and said second side panel." The claim is unclear as to how the opening can be between the fin structure hood and second side panel.

Claim 169 further recites the limitation "said fill opening." There is insufficient antecedent basis for this limitation in the claim.

Claim 214 recites wherein the backing strip is coupled. It is not clear as to what the backing strip is coupled.

Claim 217 recites "said cheese bag." The claim from which the instant claim depends does not recite a cheese bag. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

13. **Claims 148, 152- 156, 158-160, 164-166, 169, 179, 187-193, 195-197, 201-203, and 205-217 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stolmeier et al., (US 6257763) in view of May (US 5725312) and Provan et al., (US 6286189).**

Regarding instant claims 148, 169, 179, 187, 212 and 214 Stolmeier et al., teach a reclosable bag comprising at least one sheet of web material (Figure 7B Items 12 and 13 and Figure 7C) including a hood (Figure 7B, Item 60) having a

fold (see top of hood in Figure 7B) located between first and second ends (Figure 7B, See ends of hood (60)), said also having first and second areas of structural weakness (Figure 7B, Item 72) located intermediate said fold and said first and second ends of said hood. Stolmeier et al. further teach a first side panel included in said web material (Figure 7B, Item 12) extending from said first end of said hood; a second side panel (Figure 7B, Item 13) in said web material; a bottom portion included in said web material (See Figure 7C, Bottom of Bag) located intermediate said first and second side panels and defining a bottom of the bag. Regarding the at least one sheet of web material, and in light of the rejection under 112, second paragraph, above, the Examiner asserts that Stolmeier et al., teach one sheet of web material (i.e. the hood in Figures 7 and 7B) having a first and second area of structural weakness and further includes a fold. Stolmeier et al., further teach a reclosable fastener structure including first and second interlockable fastener tracks (Figure 7B, Item 70) having a skirt structure of skirt web material extending therefrom (Figure 7B, Not labeled – see material coupled to sheet of web material (Items 12 and 13). Stolmeier et al., further teach said first and second skirt structures further including distal portions (See ends of skirts of Figure 7B) and also teach said distal portions coupled to said first and second ends of said hood (Figure 7, See ends of hood below structural weakness (72) and the distal portions of said skirt structures). Stolmeier et al., further teach wherein said first and second interlockable fastener tracks of said reclosable fastener structure extend into said hood toward top of

said reclosable bag above said areas of structural weakness and wherein said bag is capable of being filled with at least one food product (Figure 7 and 7B).

Stolmeier et al., is silent in teaching wherein the bag is filled with cheese, however Stolmeier et al., teach on Column 3, Lines 40-48, that the "the present bag be used frequently in situations where the bag is filled at the factory with a product and then is marketed to the consumer." Therefore, Stolmeier et al., teach a prepackaged bag. Stolmeier et al., also teach wherein reclosable bags with tamper evident means incorporated therein have been well known in the industry to be used with food products (Column 1, Lines 19-25).

Provan et al., is relied on to teach that reclosable bags have been well known to be used for packaging cheese and other food products (Column 6, Lines 38-47) by filling at a factory and shipping to retailers for sale to consumers. Therefore, since Stolmeier et al., teach a prepackaged product and further teach that tamper evidence has been well known to be used to package food products and since Provan et al., teach filling similar bags with reclosable fasteners with cheese, filling a bag with cheese would not have provided a patentable feature over the prior art.

Regarding instant claim 190, the skirt structures include an outside surface (i.e. those facing the web material) and an inside surface (i.e. those facing the interior of the bag) and also including an upper portion and a lower portion.

Stolmeier et al., is further silent in teaching a backing strip coupled to said second skirt structure and having an edge extending downwardly from said other of said distal portions and wherein the backing strip is adhesively joined to said inside surface of said skirt structure having its distal portion coupled to said web material near the portion of the hood most distal from said first panel, as recited in instant claims 191 and 192.

May teaches food bags with reclosable fasteners comprising skirts. May further teaches providing a backing strip (Figure 13 and 14, Item 228) on the inside surface of the female side of the fastener (i.e. the portion facing the interior of the bag) having its distal portion coupled to the web and that extends below the skirt of the fastener in order to provide a hermetic seal for the bag and which is easily broken (Column 15, Line 60 to Column 16, Line 53; Column 17, Lines 20-45 and Column 18, Lines 48-67). Therefore it would have been obvious to provide a backing strip on one of the engageable fastener structures of Stolmeier et al., for the purpose of providing tamper evidence, since the bag of Stolmeier et al., strives to ensure that the customer can see whether the product to be purchased has been tampered with, and May teaches the backing strip in combination with the fastener helps to hermetically seal food in the bag.

The combination of Stolmeier et al., and May are silent in teaching an opening located between said downwardly extending edge of said backing strip and said second side panel. However, Provan et al., teach a similarly arranged fastener structure in Figure 3, as that of Stolmeier et al. Provan et al. further

teach in Figure 6, Item 88, filling the bag using an opening between the skirt of the fastener structure and a side of the web material. Additionally, Provan et al., teach that the fastener structure also includes tamper evidence (Figure 3, Items 38 and 40), thus teaching the need for a secondary opening from which to fill the bag. Stolmeier et al., similarly teach providing tamper evidence seals between the skirt structures of the fastener, therefore also requiring a second opening from which to fill the product. Based on these teachings it would have been obvious to the ordinarily skilled artisan to use an opening between the backing strip and skirt structure of modified Stolmeier et al., and the sheet of web material, as taught by Provan et al., for the purpose of maintaining the tamper evident seal between the fastener structures, while still being capable of filling the bag with a food product.

Regarding instant claims 152 and 188, Stolmeier et al., teach wherein the skirt web material is integral to said reclosable fastener structure (See downwardly extending skirts attached to the fastener structures in Figure 7 and 7B).

Regarding instant claims 153 and 189, Stolmeier et al., teach wherein said skirt web material is coupled to said reclosable fastener structure (See downwardly extending skirts attached to the fastener structures in Figure 7 and 7B).

Regarding instant claims 154, 205, 206 and 210, Stolmeier et al., is silent in teaching wherein the inside surface of said integral skirt includes a

predetermined area having a releasable adhesive material thereon. However, May further teaches wherein the two panels of the food bags comprise a multilaminate film with a tear path and a peelable seal between the fastener structures (Figures 15 and 16; Column 18, Lines 60-67 in light of Column 20, Line 25 to Column 21, Line 8 and for the purpose of providing a hermetically sealed bag and wherein the seal is easily broken by the consumer (Figures 19-21, Column 22, Lines 15-59; Column 23, Lines 3-47; Column 1, Lines 35-56 and Column 3, Lines 10-15). Nevertheless, Stolmeier et al., teach similar tamper evidence in Figure 8, Item 40 and 61) for the same purpose. Therefore, it would have been obvious to use a multiple laminate film with at least one layer comprising a tear path and providing a peelable seal for the purpose of ensuring the freshness of the product and to ensure to the consumer that the product has not been tampered with. In addition, to use a peelable seal versus the tamper evident seal between skirt structures of the fastener would have been an equivalent means of performing a similar function and thus would not have provided a patentable feature over the prior art (See MPEP 2144.06): in this case the prior art teaches that both the peelable seal and the tamper evident seal are a means of providing tamper evidence and ensuring the freshness of the products enclosed therein.

Regarding instant claims 155 and 193, Stolmeier et al. teach wherein said web material is substantially a single sheet of web material. That is, the entire

structure of Figure 7 and 7B comprises substantially a single sheet of web material having predetermined dimensions.

Regarding instant claim 156, the fold structure is located between and defined by said first and second areas of structural weakness, as discussed above.

Regarding instant claims 158 and 195, Stolmeier et al., teach wherein said first and second areas of structural weakness extend linearly across a predetermined dimension of said sheet of web material (See perforation lines in Figure 7C).

Regarding instant claims 159 and 196, the predetermined dimension is considered to be the width. Regarding instant claims 160 and 197, the predetermined dimension can also be considered the length.

Regarding instant claims 164 and 201, Stolmeier et al., teach in Figure 7C wherein the areas of structural weakness extend across a predetermined dimension of said sheet of web material in a predetermined pattern.

Regarding instant claims 165 and 202, Stolmeier et al. teach wherein the structural weakness are perforations (Column 4, Lines 3-6).

Regarding instant claims 166 and 203, it would have been obvious to the ordinarily skilled artisan that scoring would have been required in order to provide the perforations in the said predetermined pattern. Furthermore, in order to make the perforations, the sheet of web material would have had to have been perforated.

Regarding instant claims 207-209, Stolmeier et al., teach a slider fastener assembly (Figure 7) and a press to close assembly (Figure 8). Regarding the zipper fastener, based on Applicant's specification, the Examiner interprets that the assembly using the slider can be considered a zipper assembly. On page 3, lines 22-24 of applicant's specification, press-to-close is considered a zipper assembly.

Regarding instant claims 211, 213, 215, 216, 217 and 218, Stolmeier et al., teach a gusseted portion extending between said first and second side panels and defining the bottom of said reclosable bag (Figure 8, See bottom gusset).

- 14. Claim 161-163, 167, 198-200 and 204 rejected under 35 U.S.C. 103(a) as being unpatentable over Stolmeier et al., (US 6257763) in view of May (US 5725312) and Provan et al., (US 6286189), as applied to claims 148, 152-156, 158-160, 164-166, 169, 179, 187-193, 195-197, 201-203, and 205-217 above, and in further view of Hayashi (US 6074097).**

Stolmeier et al., May and Provan et al., are taken as applied above.

The combination is silent in teaching non-linear structural weakness across a predetermined dimension of said sheet of web material, as recited in instant claim 161 and wherein the perforations are microperforations, as recited in instant claim 167.

Hayashi et al. also teach reclosable bags with an area of weakness (Column 20, Lines 10-26). Hayashi et al. is relied on as evidence of the conventionality of providing a non-linear structural weakness (i.e. not a straight line), for opening a bag (Column 18, Lines 31-40; Figure 10). Hayashi et al. teach the preferred non-linear length and width (Figure 10, Item 106) and further wherein the perforations are micro-perforations, which provide greater tear strength and a more easily controlled line of weakness (Column 13, Line 35 to Column 14, Line 12). Therefore, it would have been obvious to further modify Stolmeier et al. and include a microperforated and non-linear line of weakness at a predetermined length and width since Hayashi et al. teach that providing non-linear tear path and microperforations provides greater tear strength and control. Such a modification will ensure that the tearing of the area above the structural weakness will be controlled and will not remove more of the web material than intended by the manufacturer.

Regarding instant claim 162, the predetermined dimension is considered the width of the sheet of web material. Regarding instant claim 163, the predetermined dimension is also considered the length of the sheet of web material.

- 15. Claims 157 and 194 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stolmeier et al., (US 6257763) in view of May (US 5725312) and Provan et al., (US 6286189), as applied to claims 148, 152-**

156, 158-160, 164-166, 169, 179, 187-193, 195-197, 201-203, and 205-217, above, and in further view of Herber et al. (US 5525363).

Stolmeier et al., May and Provan et al., are taken as applied above.

Stolmeier et al., May and Provan et al., are silent in teaching wherein the lines of structural weakness are integral to the parent film.

Herber et al., teach a reclosable cheese bag comprised of a single sheet of web material (Figure 18, Item 204) further comprising lines of structural weakness (Figure 18, Item 254) in a hood structure (Figure 18, Item 232), and wherein said hood structure and lines of structural weakness are integral to the single sheet of film. As such, Herber et al., teach a process for making the reclosable bag and filling said bag and wherein in this process, a station provides a single continuous line of perforation across the hood (Column 9, Lines 30-45). By using a single sheet of web material, it would have been obvious to the skilled artisan that the process of perforating the hood to provide a tear-off hood would have been streamlined since less materials would be required to make the bag. Therefore, it would have been obvious to one having ordinary skill in the art to use a single sheet of web material and to thus make the lines of structural weakness in the hood structure within this single sheet of film for the purpose of providing a more efficient process for forming the structure of the bag.

Double Patenting

16. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

17. **Claims 211, 213, 215, 217 and 218 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 5 and 26 of U.S. Patent No. 7101079.**

Although the conflicting claims are not identical, they are not patentably distinct from each other because claim 5 and 26 encompass the limitations of claims 211, 213, 215, 217 and 218.

Instant claims 211, 213, 215, 217 and 218 recite a gusset structure defining the bottom of the bag. The independent claims from which the instant

claims depend recite a fold or hood structure, a first and second side panel, said hood or fold between two areas of structural weakness, an opening located between an end of the hood and the second side panel, a reclosable fastener structure extending past the areas of structural weakness, a backing strip coupled to the skirt structure of the reclosable fastener. Regarding instant claims 211, 213, 215, 217 and 218, the non-elected claims in the parent application that are present in the instant application did not recite a backing strip coupled to said second fin structure and having an edge extending downwardly from said second fin structure and an opening located between said second fin structure and second side panel. Specifically, instant claim 169 (from which claim 217 depends) did not recite a backing strip or a gusset, and instant claim 179 (from which claim 218 depends) only recited a backing strip generally opposite said means for filling, but did not recite a backing strip coupled to said second fin structure. Therefore under 35 U.S.C. 121, the prohibition of issuing a double patenting rejection does not apply to claims 217 and 218, since the limitations of the instant claim are not consonant with the restriction requirement made by the Office, since the claims have been changed in material respects from the claims at the time the restriction requirement was made.

- 18. Claims 169, 179, 187, 212, and 214 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable**

over claims 5 and 26 of U.S. Patent No. 7101079 in view of Raines et al., (US 4394955).

The limitations of instant claims 169, 179, 187, 212 and 214 are taken as applied above. Regarding the independent claims from which instant claims 211, 213, 215, 217 and 218 depend, the Examiner notes that the only difference between patented claims 5 and 27 and instant claims 169, 179, 187, 212 and 214 is the gusset at the bottom of the bag.

The Examiner cites Raines et al., as evidence that the application of a gusset to the bottom of the bag has been a well-known feature for the purpose of allowing easier access to the interior of the bag for convenience in handling and storage (Column 2, Line 66 to Column 3, Line 22). Therefore, it would have been obvious to apply a gusset since this is a well-known feature that Raines et al., teach provides easier access to the interior of the bag so that it would have been easier to handle and store the bag when food contents are placed therein.

Regarding instant claims 169 and 179, the non-elected claim in the parent application did not recite a backing strip coupled to said second fin structure and having an edge extending downwardly from said second fin structure and an opening located between said second fin structure and second side panel. Therefore under 35 U.S.C. 121, the prohibition of issuing a double patenting rejection does not apply to claims 169 and 179, since the limitations of the instant claim are not consonant with the restriction requirement made by the Office, since the claims have been changed in material respects from the claims at the

Art Unit: 1761

time the restriction requirement was made. Instant claims 187, 212 and 214 are new claims that were not considered at the time of restriction and also include the limitations of the backing strip and the opening between the second side panel and the backing strip.

Nevertheless if applicant disagrees that the instant claims are consonant with the recited claims in the original application, Applicant is invited to specifically point out how the currently amended claims are substantially similar to those of the non-elected groupings from the parent application.

Conclusion

19. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.
20. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Art Unit: 1761

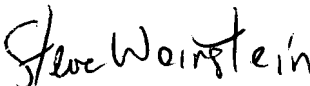
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Viren Thakur whose telephone number is (571)-272-6694. The examiner can normally be reached on Monday through Friday from 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on (571)272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Viren Thakur
Examiner
Art Unit: 1761


STEVE WEINSTEIN 1761
PRIMARY EXAMINER
7/23/07